EXHIBIT 2

1   WALTER F. BROWN (STATE BAR NO. 130248)
    MELINDA L. HAAG (STATE BAR NO. 132612)
2   ROBERT L. URIARTE (STATE BAR NO. 258274)
    ORRICK, HERRINGTON & SUTCLIFFE LLP
3   405 Howard Street
    San Francisco, California 94105
4   Telephone: 415-773-5700
    Facsimile: 415-773-5759
5   wbrown@orrick.com
    mhaag@orrick.com
6   ruriarte@orrick.com

7   Attorneys for Non-Party
    TRAVIS KALANICK
8

9   UNITED STATES DISTRICT COURT

10   NORTHERN DISTRICT OF CALIFORNIA

11   SAN FRANCISCO DIVISION

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13   WAYMO LLC,   Case No.: 17-cv-00939-WHA

14   Plaintiffs,   **DECLARATION OF ALLAN T. VOGEL
                                       RE: WAYMO'S MOTION FOR
15   v.   SANCTIONS BASED ON SPOLIATION**

16   UBER TECHNOLOGIES, INC.;
     OTTOMOTTO, LLC; OTTO TRUCKING
17   LLC,

18   Defendants.

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1   I, Allan T. Vogel, hereby declare:

2   1.   I am employed as a Senior Cybersecurity Analyst with Fidelis Cybersecurity, a

3   global electronic discovery, computer forensics and litigation support consulting firm

4   headquartered in Bethesda, Maryland. I received my Bachelor's degree in Criminal

5   Justice/Digital Forensics from Dixie State University, and am currently in the process of

6   obtaining my Master's degree in Cybersecurity/Digital Forensics. I have been conducting forensic

7   analysis and providing electronic litigation consulting services, specifically for mobile data, for

8   more than eight years. Among other devices and operating systems, I have specific experience

9   conducting forensic analysis on Apple iPhone mobile devices, including 11 generations of iPhone

10   devices running iOS operating systems ranging from iOS 3.2 to 10.3.2. I have earned several

11   industry certifications, including in Digital Forensics, Network Security, Incident Response,

12   Cyber Ethics, Cyber Law and White Collar Crime. I understand that my curriculum vitae has

13   been filed at Dkt. 1164 in the above-captioned case. I have personal knowledge of the following

14   facts, and if called to testify, I could and would competently testify thereto.

15   2.   On June 28, 2017, I was retained by Orrick, Herrington & Sutcliffe, LLP

16   ("Orrick"), to perform forensic analysis and consultation in connection with a forensic image

17   created by Stroz Friedberg ("Stroz") of a 256 gigabyte Apple iPhone 7 running iOS 10.3.2

18   belonging to Travis Kalanick. *See* Dkt. 2094-1 Paras. 2-4.

19   3.   My review of the configuration ("plist") files contained on the image of Mr.

20   Kalanick's iPhone confirmed that prior to June 2017, Mr. Kalanick's iPhone was set to auto-

21   delete text messages once they became 30 days old. Configuration files are files that reflect,

22   among other information, user-selected configuration parameters, including auto-deletion

23   settings. When a user changes a configuration parameter, that change is recorded in a

24   configuration file that includes a time stamp reflecting the time of the configuration change.

25   Configuration files for Mr. Kalanick's iPhone indicate that his iPhone was configured to

26   automatically delete text messages after thirty days at all times relevant. My analysis of the

27   configuration files on Mr. Kalanick's iPhone is consistent with the data deletion patterns reflected

28   on the device, the time and date stamps associated with deleted messages, and the fact that I was

1 able to carve (recover) a large number of text messages from Mr. Kalanick's iPhone. In previous

2 examinations of iPhones that have the 30-day auto-delete function turned on, I have observed

3 similar patterns and behaviors to those exhibited by Mr. Kalanick's iPhone.

4   4.   The Apple iOS operating system on Mr. Kalanick's phone stores configuration

5 settings in information property list files, referred to as plist files for short. An Apple plist file is

6 a structured hexadecimal text file that contains configuration information for a bundled

7 executable (*i.e.*, the software that is running on an iPhone). There are a large number of plist files

8 that reflect various iPhone configuration settings. Certain configuration settings are reflected in

9 multiple plist files. For example, a user's location settings can be reflected in separate plist files

10 associated with their maps application, weather application, and other third party applications

11 (e.g., Facebook, gmail, etc.), because each of these applications may be configured to access the
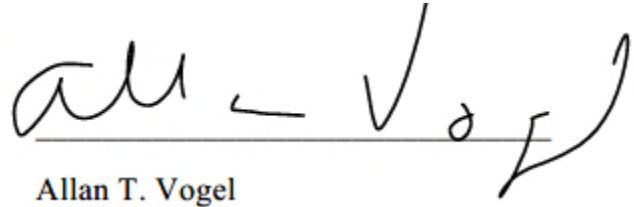
12 user's location.

13   5.   For the iOS 10.3.2 operating system on Mr. Kalanick's phone, text message

14 retention settings were reflected in a number of different plist files. I personally reviewed each

15 plist file on Mr. Kalanick's phone to determine which plist files reflected Mr. Kalanick's text

16 message retention settings. I located 18 plist files from Mr. Kalanick's phone from the preference

17 system configuration plist folder where I found text retention settings, and I exported these 18

18 plist files so that they could be produced to Waymo. These files can be used to ascertain the text

19 retention settings on Mr. Kalanick's phone. Plist files are complicated to navigate, so examiners

20 need experience in order to locate the relevant portion of each plist file.

21   6.   For example, one of the plist files produced to Waymo from Mr. Kalanick's

22 iPhone was the preferences/SystemConfiguration/preferences plist file. I conducted the following

23 steps to locate the relevant text retention setting data in this plist file. First, I identified the plist

24 file as a relevant file using the hexadecimal decoder provided in the Cellebrite forensic

25 application. Second, I exported the plist file into an application called Plist Editor Pro so that I

26 could review the plist file's xml data and locate the text retention setting data field. Once I

27 located the data field, I looked at the integer value of the field to ascertain the text retention

28 setting reflected in that plist file.

DECLARATION OF ALLAN T. VOGEL

7.   I have reviewed the declaration that Matthew Schroeder submitted regarding his review of the configuration files for Mr. Kalanick's phone in connection with Waymo's Motion for Sanctions for Spoliation of Evidence. Based on my review of Mr. Schroeder's declaration, it is my belief that Mr. Schroder did not examine the contents of the plist files to find the relevant data.

8.   Using the Cellebrite and Plist Editor Pro applications as described above, I reviewed the /mobile/library/preferences/com.apple.mobileSMS.plist file referenced in Mr. Schroeder's declaration.   My review indicates that for an iPhone 7 running iOS 10.3.2, this file does not contain text retention setting data.

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1   I declare under penalty of perjury under the laws of the United States that the foregoing is

2 true and correct. Executed on this 20th day of November, 2017 at Austin, Texas.

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Allan T. Vogel

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